LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 4 1962
JOHN F. DAVIS, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 419.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,
Petitioners,

v.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO AND RAYTHEON COMPANY,
Respondents.

BRIEF OF RAYTHEON COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

PAUL F. HANNAH,
141 Spring Street,
Lexington 73, Massachusetts,
Attorney for Raytheon Company,
Respondent.

ROBERT L. MOLINAR,
141 Spring Street,
Lexington 73, Massachusetts,
Of Counsel.

ADDISON C. GETCHELL & SON, INC., LAW PRINTERS, BOSTON.

Table of Contents.

Question presented	1
Statement of case	1
Reasons for denying the writ	2

Table of Authorities Cited.

Cases.

Atkinson v. Sinclair Refining Co., 370 U.S. 238	4
Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767	5
Dowd Box Co. v. Courtney, 368 U.S. 502	4
Garner v. Teamsters, Chauffeurs & Helpers, etc., 346 U.S. 485	6
Local 174, Teamsters &c. of America v. Lucas Flour Company, 369 U.S. 95	3
NLRB v. Radio & Television Broadcast Engineers Union, etc., 364 U.S. 573	5
Raytheon Co. v. Local Lodge No. 1836, 304 F. 2d 365	2, 5
San Diego Building Trades Council v. Garmon, 359 U.S. 236	3, 5, 6
Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448	5, 6

Statutes.

Labor Management Relations Act of 1947 (29 U.S.C. § 141 et seq.), § 301	3, 4, 6
National Labor Relations Act (29 U.S.C. § 151 et seq.)	
§ 7	3
§ 8	3

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 419.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,

Petitioners,

v.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO AND RAYTHEON COMPANY,

Respondents.

BRIEF OF RAYTHEON COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Question Presented.

Does the National Labor Relations Board, as was decided below, have exclusive jurisdiction over the jurisdictional dispute involved in this case arising from claims by one certified union that employees represented by it shall perform work hitherto performed by employees of the employer represented by another certified union?

Statement of Case.

The statement at pages 2-4 of the petition as to the proceedings below are substantially accurate. A number of

years prior to the commencement of these proceedings, in 1946, IBEW was certified after an election by the National Labor Relations Board as collective bargaining agent for all of Raytheon's production and maintenance employees in the Boston, Massachusetts, area (Opinion below, *Raytheon Co.* v. *Local Lodge No. 1836*, 304 F. 2d 365, 366). In 1952 a unit of tool and die makers and machinists was carved out of the earlier unit by the National Labor Relations Board and petitioner was certified as the representative of the employees in words practically identical with the language of the recognition clause of petitioner's contract with Raytheon (Opinion below, *Raytheon Co.* v. *Local Lodge No. 1836*, 304 F. 2d 365, 366). In 1958 petitioner claimed for the employees it represents certain work performed by members of the IBEW. Raytheon refused such claims; and IAM, after unsuccessful grievance procedures, requested arbitration. After Raytheon's refusal on the ground that arbitration was not obligatory, the proceedings below were brought.

No further elaboration on the Statement of the Case made by petitioner is required except to point out that the Court of Appeals did not reach, and therefore did not pass on, the contentions of Raytheon, first, that the claims of petitioner were not arbitrable under the collective bargaining agreement between them, and, secondly, that, even if arbitrable, the Court should make IBEW, whose members were doing the claimed work, a party to the arbitration.

Reasons for Denying the Writ.

The decision of the Court of Appeals creates no conflict among the Circuit Courts, or with the decisions of this Court. The Federal question presented does not have that

degree of importance or immediacy which requires this Court now either to approve or to reverse the answer of the Court of Appeals without waiting to see how, in practice, that answer will promote the national policy in favor of final and binding settlement of labor disputes.

Petitioner cites no Court of Appeals holding in conflict with the decision review of which is sought.

The magnification by petitioner of footnote 9 in an inapposite case (*Local 174, Teamsters &c. of America* v. *Lucas Flour Company* (1962), 369 U.S. 95) into the *ratio decidendi* does not establish a conflict with the decisions of this Court.

Lucas Flour involved a suit by an employer against a union for damages caused by a strike called in protest over the discharge of an employee during the period when a collective bargaining agreement was in effect providing for final and binding arbitration of grievances. The suit was brought in the Washington state courts. The Supreme Court of Washington affirmed a lower court's award of damages and held that the Washington state courts had jurisdiction to entertain the suit and to apply local rather than Federal law. In affirming the judgment, this Court held that state courts have concurrent jurisdiction with Federal courts over Section 301 suits, but that the law to be applied was Federal not state law. However, since applicable Federal law was not in conflict with the local law applied by the Supreme Court of Washington, the judgment was affirmed.

The facts in *Lucas Flour* therefore demonstrate that the matter was not even arguably within the protections of Section 7 or the prohibitions of Section 8 of the National Labor Relations Act within the rationale of *San Diego Building Trades Council* v. *Garmon* (1959), 359 U.S. 236. The decision in that case has no bearing upon the issue below of whether an arbitrator or the National Labor Re-

lations Board is to determine jurisdictional disputes arising from the Board's certifications.

Similarly, the facts in *Dowd Box Co.* v. *Courtney* (1962), 368 U.S. 502, and *Atkinson* v. *Sinclair Refining Co.* (1962), 370 U.S. 238, cited by petitioner, demonstrate that the language used by this Court in those cases is not relevant to the situation here. *Dowd Box* settled the issue that the Federal courts were not given exclusive jurisdiction to enforce collective bargaining agreements. *Atkinson* v. *Sinclair Refining Co.* ruled that a Federal court may hear the merits of a damage action for a strike where the employer had not agreed to submit employer grievances to arbitration.

Petitioner, the certified collective bargaining agent representing one group of Raytheon's employees, sought to obtain, through its Section 301 suit below, work currently assigned to employees represented by another certified collective bargaining agent. It wanted judicial help to compel an arbitration of a jurisdictional dispute between it and the IBEW, to which arbitration IBEW, whose members now have the work, would not be a party and in which it would be voiceless. If the Court had ordered arbitration and the arbitrator ordered the work reassigned, he could order all work reassigned, destroying collective bargaining relations and reducing to a hollow shell the Board certification of IBEW.

As the Court of Appeals pointed out, IAM's "basic demand was predicated upon the company's alleged violation of the recognition clause," which speaks in the language of the NLRB certification. A decision by the arbitrator in IAM's favor, "if erroneous, would invade IBEW's certification. Arbitration, by IAM's own admission, is but a matter of contract. A union by contract with an employer cannot define the scope of its certification; that is the

Board's function" (Opinion below, *Raytheon Co.* v. *Local Lodge No. 1836*, 304 F. 2d, at 367.)

The decisions of this Court cited by petitioner are not in conflict with the ruling below. On the contrary, the way to the Court of Appeals decision has been so clearly pointed to by this Court that it cannot be said that the Federal question it answered should now be settled by this Court.

It cannot be gainsaid that a single tribunal—the one that had initially worked out the boundaries of each union, and the one which this Court had said has as its province the settlement of jurisdictional disputes (*NLRB* v. *Radio & Television Broadcast Engineers Union, etc.* (1961), 364 U.S. 573)—would be successful in promoting the Federal policy in favor of final and binding settlement of labor disputes enunciated in *Textile Workers Union of America* v. *Lincoln Mills of Alabama* (1957), 353 U.S. 448, and *Radio and Television Broadcast Engineers, supra*, whereas a variety of arbitrators hearing only one of the certified unions involved in jurisdictional disputes could not but fail. It cannot be argued that the Board is any less capable of honoring the recognition clause of a collective bargaining agreement than would be a Federal or state court or an arbitrator.

This Court has not hesitated to declare exclusive jurisdiction in the National Labor Relations Board when it thought the national labor policy laid down by Congress would be thereby promoted. *Bethlehem Steel Co.* v. *New York State Labor Relations Board* (1947), 330 U.S. 767; *San Diego Building Trades Council* v. *Garmon* (1959), 359 U.S. 236. The unifying consideration of its decisions—and the apparent basis for the decision below—

> ". . . has been regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed

with its own procedures, and equipped with its specialized knowledge and cumulative experience."

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236, 242.

In *Garner* v. *Teamsters, Chauffeurs & Helpers, etc.* (1953), 346 U.S. 485, 490-491, this Court declared:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. . . ."

Even had the question of Federal law here involved the importance ascribed to it by petitioner, it would be premature for this Court to review it at this time.

Following the directive given by this Court in *Lincoln Mills, supra*, to fashion remedies in Section 301 suits that will effectuate the policy of our national labor laws, the Court of Appeals selected, as the most appropriate agency

to bring about peaceful disposition of the jurisdictional dispute here present, the Board which had in the first instance staked out the territories of the two disputants. Such a reference appears to be most sensible, and best designed to promote labor peace; certainly it would seem far better to serve the national labor policy than a reference to arbitration between Raytheon and petitioner of this dispute, which is basically between petitioner and IBEW. The decision furnishes an opportunity to this Court, without having committed itself, to determine, after experience, the wisdom of the conclusion of the Court of Appeals and to observe, while it still may apply a corrective, the effects on industrial peace. The more important the question is deemed to be, the more vital does it become to hammer out the answer on the anvil of experience. It is urged that the Court follow this course, and deny the petition.

PAUL F. HANNAH,
141 Spring Street,
Lexington 73, Massachusetts,
Attorney for RAYTHEON COMPANY,
Respondent.

ROBERT L. MOLINAR,
141 Spring Street,
Lexington 73, Massachusetts,
Of Counsel.